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Qiagen NV

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**  
**SAN DIEGO DIVISION**

TROLL BUSTERS LLC,  
  
Plaintiff,  
  
v.

ROCHE DIAGNOSTICS GMBH, ROCHE  
MOLECULAR SYSTEMS (RMS), ROCHE  
DIAGNOSTICS CORP. D/B/A ROCHE  
APPLIED SCIENCES, EUROGENTEC  
NORTH AMERICA INC., CLONTECH  
LABORATORIES INC., INTEGRATED DNA  
TECHNOLOGIES (IDT), LIFE  
TECHNOLOGIES CORPORATION, QIAGEN  
NV., THERMO FISHER SCIENTIFIC, INC.,  
GENE LINK INC., GENSCRIPT USA INC.,  
EMD CHEMICALS INCL., TRILINK  
BIOTECHNOLOGIES INC., and CEPHEID,  
  
Defendant.

Case No. 3:11-cv-0056-IEG-WVG

**DEFENDANT QIAGEN NV'S RULE 5.1  
NOTICE OF CONSTITUTIONAL  
CHALLENGE**

1 Defendant Qiagen NV files this Notice regarding its constitutional challenge to 35 U.S.C.  
2 § 292 (the false marking statute), which is set forth in Qiagen NV's Motion to Dismiss the First  
3 Amended Complaint, filed on May 9, 2011 in the above-captioned matter..

4 The question raised by Defendant's constitutional challenge is whether 35 U.S.C. § 292  
5 violates the Take Care Clause of Article II, § 3 of the United States Constitution by failing to  
6 include any of the procedural safeguards that have been held to preserve the constitutionality of  
7 other *qui tam* statutes like the False Claims Act, such as the right of the United States to be  
8 notified by the relator of a case before a defendant is served, the right to intervene, the right to  
9 seek dismissal or settlement of a false marking action over the objection of the relator, and the  
10 right to prevent dismissal of the action by the relator.

11  
12 DATED: May 9, 2011

MAYER BROWN LLP  
Theresa M. Gillis

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14 By: /s/ Theresa M. Gillis  
15 Theresa M. Gillis  
16 Attorneys for Defendant  
17 Qiagen NV  
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**Certificate of Service**

The undersigned hereby certifies that a true and correct copy of the foregoing document has been served on May 9, 2011, to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Civil Local Rule 5.4.

DATED: May 9, 2011

MAYER BROWN LLP  
THERESA M. GILLIS

By: /s/ Theresa M. Gillis  
Theresa M. Gillis  
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cc: Eric H. Holder, Jr.  
Attorney General of the United States  
DOJ Room B-103 – Service of Process  
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Washington DC 20004  
(via certified mail)

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